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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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8 UNITED STATES OF AMERICA

Case No. 2:04-CR-262 JCM (PAL)

9 Plaintiff,

ORDER

10 v.

11 DAVID KENT FITCH,

12 Defendant.

13  
14 Presently before the court is petitioner David Kent Fitch's motion for a certificate of  
15 appealability. (ECF No. 390). The government has not filed a response, and the time for doing so  
16 has since passed.

17 The facts of this case are familiar to the parties, and the court will not recite them herein.<sup>1</sup>

18 The controlling statute in determining whether to issue a certificate of appealability is 28  
19 U.S.C. § 2253, which provides as follows:

20 (a) In a habeas corpus proceeding or a proceeding under section  
21 2255 before a district judge, the final order shall be subject to  
22 review, on appeal, by the court of appeals for the circuit in which  
the proceeding is held.

23 (b) There shall be no right of appeal from a final order in a  
24 proceeding to test the validity of a warrant to remove to another  
25 district or place for commitment or trial a person charged with a  
26 criminal offense against the United States, or to test the validity of  
such person's detention pending removal proceedings.

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28 <sup>1</sup> For a detailed summary of the factual background of this case, see *United States v. Fitch*,  
659 F.3d 788 (9th Cir. 2011).

1  
2 (c)

3 (1) Unless a circuit justice or judge issues a certificate of  
4 appealability, an appeal may not be taken to the court of appeals  
from—

5 (A) the final order in a habeas corpus proceeding in which  
6 the detention complained of arises out of process issued by  
a State court; or

7 (B) the final order in a proceeding under section 2255.

8 (2) A certificate of appealability may issue under paragraph (1) only  
9 if the applicant has made a substantial showing of the denial of a  
constitutional right.

10 (3) The certificate of appealability under paragraph (1) shall indicate  
11 which specific issue or issues satisfy the showing required by  
paragraph (2).

12 28 U.S.C. § 2253.

13 Under § 2253, the court may issue a certificate of appealability only when a movant makes  
14 a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a  
15 substantial showing, the movant must establish that “reasonable jurists could debate whether (or,  
16 for that matter, agree that) the petition should have been resolved in a different manner or that the  
17 issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v.*  
18 *McDaniel*, 529 U.S. 473, 484 (2000) (citation omitted).

19 The court holds that petitioner has not made the required substantial showing of the denial  
20 of a constitutional right to justify the issuance of a certificate of appealability. Reasonable jurists  
21 would not find the court’s determination that movant is not entitled to relief under § 2255  
22 debatable, wrong, or deserving of encouragement to proceed further. *See id.* Accordingly, the  
23 court declines to issue a certificate of appealability.

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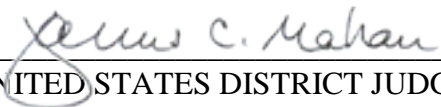
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Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that petitioner's motion for a certificate of appealability (ECF No. 390) be, and the same hereby is, DENIED.

DATED July 3, 2018.

  
UNITED STATES DISTRICT JUDGE